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IZUMI OHKUBO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IZUMI OHKUBO,

Plaintiff,

vs.

ANTARA BIOSCIENCES, INC.,  
MARC R. LABGOLD and DANA  
ICHINOTSUBO,

Defendants.

Case No. C07 06354 JW

**[PROPOSED] ORDER DENYING  
DEFENDANTS' MOTION TO DISMISS  
COMPLAINT**

Date: April 14, 2008  
Time: 9 a.m.

Hon. James Ware

Having considered the submissions of the parties and oral argument of counsel, the Court hereby DENIES Defendants' Motion to Dismiss plaintiff Izumi Ohkubo's Complaint.

Defendants ask the Court to dismiss for improper venue, arguing that Article 9 of the parties February 28, 2006 Investment Contract is a mandatory forum selection provision. Article 9 states in its entirety that "The Tokyo District Court shall be the court with jurisdiction regarding lawsuits related to this Memorandum." Controlling Ninth Circuit precedent requires that, "[t]o be mandatory, a [forum selection] clause must contain language that clearly designates a forum as the exclusive one." *N. Cal. Dist. Council of Laborers v. Pittsburgh-Des Moines Steel Co.*, 69 F.3d 1034 (9th Cir. 1995). "When only jurisdiction is specified the clause will generally not be enforced without some further language indicating the parties' intent to make jurisdiction exclusive." *Docksider, Ltd. v. Sea Tech., Ltd.*, 875 F.2d 762, 764 (9th Cir. 1989). Here, because

1 the relevant contractual provision (which the Court notes was drafted by defendant Antara  
2 Biosciences, Inc.), does not expressly require exclusive jurisdiction in the Tokyo District Court.  
3 Accordingly, at most, Article 9 permits the Tokyo District Court to exercise jurisdiction, but such  
4 jurisdiction is not exclusive.

5 Defendants motion to dismiss for *forum non conveniens* is also DENIED. The private and  
6 public interest factors weigh against dismissal. *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142-  
7 43 (9th Cir. 2001). Private interest factors generally focus on the convenience to witnesses and to  
8 the defendants and the location of evidence. Plaintiff, for his part, has pointed to over 20  
9 witnesses--including the Defendants themselves--who are located in California or the United  
10 States. The Court further notes that Antara was headquartered in a 42,000 square foot facility  
11 only a few minutes away in Mountain View, California. Accordingly, the Defendants cannot  
12 argue that litigation in this Court is inconvenient to them or to former Antara employees who are  
13 likely to be witnesses in this Action. Defendants have pointed to one witness who is resident in  
14 Japan who Defendants contend has evidence that will be critical to the defense. This witness,  
15 however, has agreed to provide testimony in this Action if requested to do so by the Defendants.

16 The public interest factors also weigh against dismissal. This case is about the  
17 procurement by a California-based company of start-up capital from foreigners. California has an  
18 interest in ensuring that potential investors in California businesses are not cheated. Accordingly,  
19 California's interest in resolving this dispute weighs heavily against dismissal.

20 Accordingly, Defendants' Motion to Dismiss Plaintiff's Complaint is DENIED in its  
21 entirety.

22 IT IS SO ORDERED.

23 Dated: \_\_\_\_\_, 2008

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26 HON. JAMES WARE  
UNITED STATES DISTRICT JUDGE

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